

TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD

vs.

PAMELA F. NEWKIRK
TX-1333126-R

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DOCKETED COMPLAINT NO. 12-231
& 13-090

AGREED FINAL ORDER

On the 17th day of May, 2013, the Texas Appraiser Licensing and Certification Board, (the "Board"), considered the matter of the certification of Pamela F. Newkirk (the "Respondent").

In order to conclude this matter, neither admits nor denies the truth of the Findings of Fact and Conclusions of Law contained herein and further agrees to the disciplinary action set out in this Agreed Final Order.

FINDINGS OF FACT

1. Respondent is a Texas state certified residential real estate appraiser who holds certification number TX-1333126-R, and was certified by the Board during all times material to the above-noted complaint.
2. On or about September 29th, 2008, Respondent appraised real property located at: 9228 Pinehaven Drive, Dallas, Texas ("the property").
3. Thereafter two complaints were filed with the Board. Both complaints alleged that the Respondent produced an appraisal report for the property that did not conform to the Uniform Standards of Professional Appraisal Practice (USPAP), TEX. OCC. CODE CHPT. 1103 (the "Act") and 22 TEX. ADMIN. CODE CHPT. 153 and 155 (the "Rules").
4. Thereafter the Board notified Respondent of the nature of the accusations involved and Respondent was afforded an opportunity to respond to the accusations in the complaints. Respondent was also requested to provide certain documentation to the Board, which she did
5. The parties enter into this consent order ("Order") in accordance with TEX. OCC. CODE § 1103.458.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE § 1103.
2. Respondent violated the above-noted provisions of USPAP as prohibited by TEX. OCC. CODE § 1103.405 and 22 TEX. ADMIN. CODE §§ 155.1(a) and 153.20(a)(3).
3. The parties are authorized to resolve their dispute by means of a consent order in accordance with Tex. Occ. Code §1103.458.
4. Respondent violated TEX. OCC. CODE § 1103.405, 22 TEX. ADMIN. CODE §§ 153.20(a)(3) and 155.1(a) by the following acts or omissions which did not conform to USPAP in effect at the time of the appraisal report for the property:
 - a) USPAP Ethics Rule -- Respondent violated the record keeping provisions of the Ethics Rule because she failed to maintain a work file containing all data, information, and documentation necessary to support her opinions and conclusions;
 - b) USPAP Standards 1-2(e)(i) & 2-2(b)(iii); 1-2(e)(iv) & 2-2(b)(viii) -- Respondent failed to identify and report the site and improvement(s) description adequately, including the nature of the property's zoning, the additional square footage added to the property and physical deficiencies or adverse conditions contained within the property;
 - c) USPAP Standards 1-3(a) & 2-2(b)(viii); 1-1(b) -- Respondent failed to identify and analyze factors affecting marketability (such as economic supply and demand, and market area trends), misrepresented the one-unit housing price range, misrepresented that the market was stable when in fact the market was declining significantly and did not disclose and analyze the significant present of REO sales in this area. She also failed to provide supporting documentation and a summary of her reasoning in support of these required analyses, conclusions and determinations which are necessary to reach a credible and reliable market value determination;
 - d) USPAP Standards 1-3(b) & 2-2(b)(ix) -- Respondent has failed to provide in her reports a brief summary of his rationale for his determination of the properties' highest and best use. Due to the additional square footage added on to the improvements, the property suffered from obsolescence because it was significantly larger than other properties in the area. However this significant issue, which impacted highest and best use and marketability was not analyzed and reported by Respondent;
 - e) USPAP Standards 1-4(b)(i) & 2-2(b)(viii) -- Respondent failed to summarize her supporting rationale for her site value determination, nor provide any supporting documentation in the work file;

- f) USPAP Standards 1-4(b)(iii) & 2-2(b)(viii); 1-1(a) & 1-4(b) -- Respondent did not collect, verify, analyze and reconcile accrued depreciations, including the property's super adequate gross living area size, physical obsolescence stemming from structural problems and other functional obsolescence attributable to the poor function of the added living area. In addition, Respondent incorrectly calculated depreciation and used incorrect figures when making these determinations. In general, recognized methods and techniques were not employed in the analysis of depreciation as it relates to the cost approach;
- g) USPAP Standards 1-4(a) & 2-2(b)(viii); 1-1(a) & 1-4(a) -- Respondent has failed to collect, verify, analyze and reconcile comparable sales data adequately and has not employed recognized methods and techniques in her sales comparison approach. Respondent has not provided supporting documentation nor her reasoning and a summary of her analysis of the sales comparison approach. Respondent also failed to make appropriate adjustments or made inappropriate adjustments to the sales she did use, and did not discuss his analysis and reasoning behind the adjustments she made or elected not to make;
- h) USPAP Standards 1-4(c)(iii) & 2-2(b)(viii); 1-1(a) & 1-4(c) -- Respondent failed to collect, verify, analyze and reconcile comparable data to estimate capitalization and/or discount rates and did not provide data supporting her gross rent multiplier determination. In general, Respondent did not employ recognized methods and techniques correctly;
- i) USPAP Standards 1-5(a) & 2-2(b)(viii) ; 1-1(b); 1-6(a) & (b) & 2-2(b)(viii) -- Respondent failed to disclose and analyze the contract of sale and reconcile that information and data and failed to provide a summary of her supporting reasoning and analysis of all of this information and reconciliation;
- j) USPAP Standards 1-5(b) & 2-2(b)(viii); 1-1(b); 1-6(a) & 2-2(b) & 2-2(b)(viii) -- Respondent made material misrepresentations and omitted material facts concerning a prior sale of the property that occurred two months earlier and failed to analyze and reconcile this significant and material information (including summarizing any reasoning supporting any analyses, opinions and conclusions she may have made and failing to provide work file documentation in support of any analyses, opinions and conclusions she may have made) within the 3 years prior to the effect date of each of the appraisal report Respondent prepared for the property; and,
- k) USPAP Standards 1-1(a), 1-1(b), 1-1(c) and 2-1(a) -- For the reasons detailed above, Respondent produced a misleading appraisal report for the property that contained several substantial errors of omission or commission by not employing correct methods and techniques. This resulted in an appraisal report that was not credible or reliable.

ORDER

Based on the above findings of fact and conclusions of law, the Board **ORDERS**:

1. **EDUCATION.** On or before **November 17th, 2013**, Respondent shall submit documentation of attendance and successful completion of the classes set out below to the Board. All classes required by this Order must be classes approved by the Board. Unless otherwise noted below, all classes must require in-class attendance and have an exam. Respondent must receive a passing grade on the exam given in each class. None of the required classes will count toward Respondent's continuing education requirements for licensure. **Respondent is solely responsible for locating and scheduling classes to timely satisfy this Order and is urged to do so well in advance of any compliance deadline to ensure adequate time for completion of the course in the event of course cancellation or rescheduling by the course provider.**
 - A. A minimum 7 classroom-hour course in the Sales Comparison Approach;
 - i. No examination shall be required for this course;
2. **MENTORSHIP.** On or before **August 17th, 2013**, Respondent shall complete 8 hours of in-person mentorship conducted by a certified USPAP instructor approved by Board staff in accordance with the schedule and topics set out below. Respondent shall submit a certification of completion signed by the approved certified USPAP instructor on or before the due date listed for each mentorship requirement. Respondent is solely responsible for locating and scheduling an approved mentor to timely satisfy this Order and is urged to do so well in advance of any compliance deadline to ensure adequate time for completion.
 - A. 4 of these hours shall address analysis, methods and techniques related to adjustments and the sales comparison approach; and,
 - B. 4 of these hours shall address analysis, methods and techniques related to depreciation and obsolescence.
3. Fully and timely comply with all of the provisions of this Agreed Final Order; and,
4. Comply with all provisions of the Act, the Rules of the Board, and USPAP in the future or be subjected to further disciplinary action.

IF RESPONDENT FAILS TO TIMELY COMPLY WITH ANY TERMS IN THIS AGREED FINAL ORDER, WHICH HAS A SPECIFIC, STATED DUE DATE, THE RESPONDENT SHALL BE IMMEDIATELY ASSESSED A \$1,000 ADMINISTRATIVE PENALTY AND RESPONDENT'S LICENSE, CERTIFICATION, AUTHORIZATION OR REGISTRATION SHALL BE IMMEDIATELY SUSPENDED, UNTIL THE RESPONDENT IS IN FULL COMPLIANCE WITH THE TERMS OF THIS ORDER AND THE \$1,000 ADMINISTRATIVE

PENALTY HAS BEEN RECEIVED BY THE BOARD. Payment of the \$1,000 administrative penalty must be in certified funds. The Board will notify the Respondent in writing of the failure to comply, the immediate assessment of the administrative penalty and the immediate suspension of the license, certification, authorization or registration.

ANY SUCH SUSPENSION AND ADMINISTRATIVE PENALTY SHALL BE EFFECTIVE WITHOUT THE NEED FOR A HEARING OR OTHER ADMINISTRATIVE DUE PROCESS UNDER THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT OR THE ADMINISTRATIVE PROCEDURE ACT, AND RESPONDENT SPECIFICALLY WAIVES ANY SUCH HEARING OR DUE PROCESS. If Respondent's license, certification, authorization or registration is suspended on such a basis, the suspension shall remain in effect until such time as Respondent is in full compliance with the terms of this Order and has provided adequate documentation of that compliance to the Board.

RESPONDENT, BY SIGNING THIS AGREED FINAL ORDER, WAIVES THE RESPONDENT'S RIGHT TO A FORMAL HEARING, ANY MOTION FOR REHEARING, AND ANY RIGHT TO SEEK JUDICIAL REVIEW OF THIS AGREED FINAL ORDER. Information about this Agreed Final Order is subject to public information requests and notice of this Agreed Final Order will be published on the Board's web site.

Respondent is solely responsible for timely delivery to the Board of all documents necessary for compliance of this Agreed Final Order. Respondent shall retain documentation (reply email, fax confirmation, return receipt, etc.) confirming receipt by the Board of all the necessary documents. Respondent shall send all documents necessary for compliance by: (1) email to compliance.talcb@talcb.texas.gov, (2) fax to (512) 936-3966, attn: Compliance, or (3) certified mail return receipt requested to Standards & Enforcement Services, Texas Appraiser Licensing & Certification Board, Stephen F. Austin Building, 1700 N. Congress Ave., Suite 400, Austin, TX 78701.

I HAVE READ AND REVIEWED THIS ENTIRE AGREED FINAL ORDER FULLY AND AM ENTERING INTO IT OF MY OWN FREE WILL TO AVOID THE EXPENSE OF LITIGATION AND TO REACH AN EXPEDITIOUS RESOLUTION OF THE MATTER. I NEITHER ADMIT NOR DENY THAT THE FINDINGS OF FACT AND CONCLUSIONS OF LAW CONTAINED HEREIN ARE CORRECT. I UNDERSTAND ALL OF MY COMPLIANCE OBLIGATIONS UNDER THIS AGREED FINAL ORDER AND THE CONSEQUENCES FOR FAILING TO COMPLY WITH THOSE OBLIGATIONS.

I UNDERSTAND THAT THE BOARD AND ITS STAFF CANNOT PROVIDE ME WITH LEGAL ADVICE. I AM AWARE OF MY RIGHT TO A HEARING, AND HEREBY WAIVE A HEARING AND ALSO WAIVE ANY RIGHT TO SEEK JUDICIAL REVIEW OF THIS AGREED FINAL ORDER, INCLUDING FOR ANY SUBSEQUENT ACTION RESULTING FROM MY FAILURE TO TIMELY COMPLY WITH AN ADMINISTRATIVE REQUIREMENT OF THIS AGREED FINAL ORDER, SUCH AS PAYMENT OF A FEE, COMPLETION OF COURSEWORK OR FAILURE TO PROVIDE LOGS.

This agreement may be executed in one or more counterparts, in form of electronic mail, facsimile, or other written expression of agreement, each of which shall be deemed an original and together shall comprise evidence of full execution of the agreement.

THE DATE OF THIS AGREED FINAL ORDER shall be the date it is executed by the Chairperson of the Texas Appraiser Licensing and Certification Board. The Chairperson has been delegated the authority to sign this Agreed Final Order by the Texas Appraiser Licensing and Certification Board vote.

Signed this 25 day of March, 2013.

Pamela F. Newkirk
PAMELA F. NEWKIRK

Ted Whitmer

TED WHITMER, ATTORNEY FOR
PAMELA F. NEWKIRK

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the 25 day of March, 2013, by PAMELA F. NEWKIRK, to certify which, witness my hand and official seal.

B. L. Garrett
Notary Public Signature
Brandon Garrett
Notary Public's Printed Name



Signed by the Standards and Enforcement Services Division this 16TH day of May, 2013.

Troy Beaulieu
Troy Beaulieu, TALCB Staff Attorney

Signed by the Commissioner this 17 day of May, 2013.

Douglas Oldmixon
Douglas Oldmixon, Commissioner
Texas Appraiser Licensing and Certification Board

Approved by the Board and Signed this 17 day of May, 2013.

Walker Beard
Walker Beard, Chairperson
Texas Appraiser Licensing and Certification Board